

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CRIMINAL NO. 2:05CR8

UNITED STATES OF AMERICA

VS.

FREEMAN DARRELL WELCH

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ORDER

THIS MATTER is before the Court on the Government’s motions *in limine* to exclude expert testimony and for discovery. The motions are denied.

The Government claims that the expert reports, copies of which were provided to it by the defense counsel, show that the experts will attempt to offer expert testimony as to the ultimate issue, the Defendant’s *mens rea* at the time of the crime. Defense counsel has responded that he is fully aware that such testimony on the ultimate issue is not allowed under the rules of evidence. The Court, therefore, finds the motion is moot.

The Government also claims it is entitled to discover the testing data, including questions, answers and results, used by the experts. The parties are advised to consult and follow the directives of Federal Rule of Criminal Procedure 16 in this regard since the Court is not privy to whether the “defendant [has] request[ed] disclosure under Rule 16(a)(1)(F)” or whether the Government has complied.

As for the Government’s request for the qualifications of one of the witnesses, the Rule does require that the Defendant provide the same. **Fed. R. Crim. P. 16(b)(1)(C).**

IT IS, THEREFORE, ORDERED that the Government's motion to exclude is hereby **DENIED**;

IT IS FURTHER ORDERED that the Government's motion for discovery is hereby **DENIED** except as to the qualifications of the defense witness and the parties are urged to cooperatively resolve the issue of testing data; and

IT IS FURTHER ORDERED that the Government's motion to seal is hereby **GRANTED**.

Signed: July 28, 2005

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge

